

Executive Summary – Enforcement Matter – Case No. 42068

City of Malone

RN102075660

Docket No. 2011-1189-MWD-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MWD

Small Business:

No

Location(s) Where Violation(s) Occurred:

City of Malone, approximately 1,150 feet east of the intersection of Farm-to-Market Road 308 and State Highway ("SH") 171, on the south side of SH 171, Hill County

Type of Operation:

Wastewater treatment facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: July 27, 2012

Comments Received: No

Penalty Information

Total Penalty Assessed: \$23,144

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$23,144

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Average

Site/RN - Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

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Docket No. 2011-1189-MWD-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: April 26, 2011 and June 23, 2011

Date(s) of NOE(s): June 27, 2011 and June 29, 2011

Violation Information

1. Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state. Specifically, sludge was documented in the receiving stream. Samples collected at the mixing point of the effluent and the receiving stream and approximately 200 yards downstream indicated elevated levels of pollutants (including total suspended solids, volatile suspended solids, ammonia nitrogen, total phosphorus, and total kjeldahl nitrogen), as well as decreased levels of dissolved oxygen [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1) and (4) and Texas Pollutant Discharge Elimination System (“TPDES”) Permit No. WQ0010514001, Permit Conditions No. 2.d].
2. Failed to comply with permitted effluent limitations for dissolved oxygen, chlorine, 5-day biochemical oxygen demand, and total suspended solids [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0010514001, Effluent Limitations and Monitoring Requirements Nos. 1 and 6].
3. Failed to comply with permitted effluent limitations. Specifically, a chlorine grab sample taken by the investigator was not within the permitted range [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0010514001, Effluent Limitations and Monitoring Requirements No. 2].
4. Failed to maintain complete records of monitoring activities. Specifically, measurement times were not recorded on the operator logs [30 TEX. ADMIN. CODE §§ 305.125(1) and (11)(C)(i) and 319.7(a) and TPDES Permit No. WQ0010514001, Monitoring and Reporting Requirements No. 3.c].
5. Failed to ensure that all systems of collection, treatment, and disposal are properly operated and maintained. Specifically, there were floating solids and settled sludge located in the chlorine contact chamber [30 TEX. ADMIN. CODE § 305.125(1) and TPDES Permit No. WQ0010514001, Operational Requirements No. 1].
6. Failed to provide a backflow prevention device at the Facility. Specifically, atmospheric vacuum breakers were not installed on the potable water faucets [30 TEX. ADMIN. CODE § 317.7(i)].
7. Failed to accurately measure the flow as prescribed in the Water Measurement Manual, United States Department of the Interior Bureau of Reclamation, Washington, D.C. or methods that are equivalent as approved by the Executive Director. Specifically,

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the effluent intermittently backs up causing inaccurate flow measurements [30 TEX. ADMIN. CODE §§ 305.125(1) and 319.11(d), and TPDES Permit No. WQ0010514001, Monitoring and Reporting Requirements No. 2.a].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

By May 13, 2011, Respondent has implemented the following corrective measures at the Facility:

- a. Corrected and updated the operator logs to notate the measurement times;
- b. Removed, cleaned, and disposed of the sludge and solids in the chlorine contact chamber;
- c. Installed atmospheric vacuum breakers on potable water connections; and
- d. Adjusted the electrodes on the inline pump to control flow measurements.

Technical Requirements:

The Order will require Respondent to:

- a. Within 30 days, remove and properly dispose of the sludge in the receiving stream;
- b. Within 45 days, submit written certification of compliance with Ordering Provision a.; and
- c. Within 90 days, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0010514001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

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Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: JR Cao, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2543; Debra Barber, Enforcement Division, MC 219, (512) 239-0412

TCEQ SEP Coordinator: N/A

Respondent: The Honorable David R. Bow, Mayor, City of Malone, P.O. Box 6, Malone, Texas 76660

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	27-Jun-2011	Screening	11-Jul-2011	EPA Due	
	PCW	12-Jul-2011				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Malone		
Reg. Ent. Ref. No.	RN102075660		
Facility/Site Region	9-Waco	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	42068	No. of Violations	6
Docket No.	2011-1189-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	JR Cao
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$16,100
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	54.0% Enhancement	Subtotals 2, 3, & 7	\$8,694
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Notes: Enhancement for two NOVs with dissimilar violations and ten months of self-reported effluent violations.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$1,650
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$1,433
Approx. Cost of Compliance \$39,635
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$23,144
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$23,144
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$23,144
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DEFERRAL	20.0% Reduction	Adjustment	-\$4,628
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$18,516
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Screening Date 11-Jul-2011

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PCW

Respondent City of Malone

Policy Revision 2 (September 2002)

Case ID No. 42068

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102075660

Media [Statute] Water Quality

Enf. Coordinator JR Cao

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	10	50%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 54%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Enhancement for two NOVs with dissimilar violations and ten months of self-reported effluent violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 54%

Screening Date 11-Jul-2011
Respondent City of Malone
Case ID No. 42068
Reg. Ent. Reference No. RN102075660
Media [Statute] Water Quality
Enf. Coordinator JR Cao
Violation Number 1

Docket No. 2011-1189-MWD-E

PCW

Policy Revision 2 (September 2002)
PCW Revision October 30, 2008

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1) and (4) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010514001, Permit Conditions No. 2.d

Violation Description

Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state. Specifically, sludge was documented in the receiving stream. Samples collected at the mixing point of the effluent and the receiving stream and approximately 200 yards downstream indicated elevated levels of pollutants (including total suspended solids, volatile suspended solids, ammonia nitrogen, total phosphorus, and total kjeldahl nitrogen), as well as decreased levels of dissolved oxygen.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants as a result of this violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 3

76 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$7,500

Three monthly events are recommended from the date of the investigation (April 26, 2011) to the screening date (July 11, 2011).

Good Faith Efforts to Comply

0.0% Reduction

\$0

Extraordinary

Before NOV NOV to EDPRP/Settlement Offer

Ordinary

N/A

Notes

x (mark with x)

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,101

Violation Final Penalty Total \$11,550

This violation Final Assessed Penalty (adjusted for limits) \$11,550

Economic Benefit Worksheet

Respondent City of Malone
Case ID No. 42068
Reg. Ent. Reference No. RN102075660
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$28,000	26-Apr-2011	7-Feb-2012	0.79	\$1,101	n/a	\$1,101

Notes for DELAYED costs

Estimated cost to prevent, remove, and dispose of the sludge from the receiving stream, respectively.
Date required is the investigation date. Final date is the anticipated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$28,000

TOTAL

\$1,101

Screening Date 11-Jul-2011

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PCW

Respondent City of Malone

Policy Revision 2 (September 2002)

Case ID No. 42068

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102075660

Media [Statute] Water Quality

Enf. Coordinator JR Cao

Violation Number 2

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and TPDES Permit No. WQ0010514001, Effluent Limitations and Monitoring Requirements Nos. 1, 2, and 6

Violation Description

Failed to comply with permitted effluent limitations, as documented in a record review on June 23, 2011, and as shown in the attached violation table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

A simplified model was used to evaluate biochemical oxygen demand to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Total suspended solids, dissolved oxygen, and chlorine were also considered. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2

121 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,000

Two quarterly events are recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$317

Violation Final Penalty Total \$3,080

This violation Final Assessed Penalty (adjusted for limits) \$3,080

Economic Benefit Worksheet

Respondent City of Malone
Case ID No. 42068
Reg. Ent. Reference No. RN102075660
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$5,000	31-Dec-2010	7-Apr-2012	1.27	\$317	n/a	\$317

Notes for DELAYED costs

Estimated cost to evaluate and implement corrective actions for the effluent violations. Date required is the first date of non-compliance. Final date is the anticipated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$317

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Respondent City of Malone
Case ID No. 42068
Reg. Ent. Reference No. RN102075660
Media [Statute] Water Quality
Enf. Coordinator JR Cao

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PCW

Policy Revision 2 (September 2002)
PCW Revision October 30, 2008

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 305.125(1) and (11)(C)(i) and 319.7(a) and TPDES Permit No. WQ0010514001, Monitoring and Reporting Requirements No. 3.c

Violation Description

Failed to maintain complete records of monitoring activities. Specifically, measurement times were not recorded on the operator logs.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification			
	Major	Moderate	Minor
			x

Percent 1%

Matrix Notes

At least 70% of the rule requirement was met.

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 1

1 **Number of violation days**

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$100

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$25

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	x
N/A	(mark with x)

Notes The Respondent came into compliance on May 13, 2011.

Violation Subtotal \$75

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$129

This violation Final Assessed Penalty (adjusted for limits) \$129

Economic Benefit Worksheet

Respondent: City of Malone
Case ID No. 42068
Reg. Ent. Reference No. RN102075660
Media Water Quality
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	1/2	\$0
Record Keeping System	\$25	26-Apr-2011	13-May-2011	0.05	\$0	1/2	\$0
Training/Sampling				0.00	\$0	1/2	\$0
Remediation/Disposal				0.00	\$0	1/2	\$0
Permit Costs				0.00	\$0	1/2	\$0
Other (as needed)				0.00	\$0	1/2	\$0

Notes for DELAYED costs

Estimated cost associated with updating operator logs. Date required is the date of the investigation.
Final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$25

TOTAL

\$0

Screening Date 11-Jul-2011

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PCW

Respondent City of Malone

Policy Revision 2 (September 2002)

Case ID No. 42068

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102075660

Media [Statute] Water Quality

Enf. Coordinator JR Cao

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and TPDES Permit No. WQ0010514001, Operational Requirements No. 1

Violation Description Failed to ensure that all systems of collection, treatment, and disposal are properly operated and maintained. Specifically, there were floating solids and settled sludge located in the chlorine contact chamber.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

>> Programmatic Matrix

Falsification			
	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or the environment as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

17 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$1,000

One quarterly event is recommended from the investigation date (April 26, 2011) to the date of compliance (May 13, 2011).

Good Faith Efforts to Comply

25.0% Reduction

\$250

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes The Respondent came into compliance on May 13, 2011.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$15

Violation Final Penalty Total \$1,290

This violation Final Assessed Penalty (adjusted for limits) \$1,290

Economic Benefit Worksheet

Respondent City of Malone
Case ID No. 42068
Reg. Ent. Reference No. RN102075660
Media Water Quality
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	\$0	\$0
Record Keeping System				0.00	\$0	\$0	\$0
Training/Sampling				0.00	\$0	\$0	\$0
Remediation/Disposal				0.00	\$0	\$0	\$0
Permit Costs				0.00	\$0	\$0	\$0
Other (as needed)	\$6,500	26-Apr-2011	13-May-2011	0.05	\$15	\$0	\$15

Notes for DELAYED costs

Estimated cost to clean and dispose of the sludge in the chlorine contact chamber. Date required is the date of the investigation. Final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$6,500

TOTAL

\$15

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Respondent City of Malone
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Media [Statute] Water Quality
Enf. Coordinator JR Cao

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PCW

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

Violation Number 5

Rule Cite(s)

30 Tex. Admin. Code § 317.7(i)

Violation Description

Failed to provide a backflow prevention device at the Facility. Specifically, atmospheric vacuum breakers were not installed on the potable water faucets.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification			
	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to install atmospheric vacuum breakers on potable water connections could result in the release of significant amounts of pollutants to the potable water system which would exceed levels that are protective of human health as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2

17 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$5,000

Two monthly events (one of each faucet) are recommended from the investigation date (April 26, 2011) to the date of compliance (May 13, 2011).

Good Faith Efforts to Comply

25.0% Reduction

\$1,250

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	x
N/A	(mark with x)

Notes

The Respondent came into compliance on May 13, 2011.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$6,450

This violation Final Assessed Penalty (adjusted for limits) \$6,450

Economic Benefit Worksheet

Respondent City of Malone
Case ID No. 42068
Req. Ent. Reference No. RN102075660
Media Water Quality
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

Delayed Costs

Equipment	\$10	26-Apr-2011	13-May-2011	0.05	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Actual cost (\$5 per faucet) to install atmospheric vacuum breakers on the potable water connections.
Date required is the date of the investigation. Final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10

TOTAL

\$0

Screening Date 11-Jul-2011
Respondent City of Malone
Case ID No. 42068
Reg. Ent. Reference No. RN102075660
Media [Statute] Water Quality
Enf. Coordinator JR Cao
Violation Number 6

Docket No. 2011-1189-MWD-E

PCW

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

Rule Cite(s) 30 Tex. Admin. Code §§ 305.125(1) and 319.11(d), and TPDES Permit No. WQ0010514001, Monitoring and Reporting Requirements No. 2.a

Violation Description

Failed to accurately measure the flow as prescribed in the Water Measurement Manual, United States Department of the Interior Bureau of Reclamation, Washington, D.C. or methods that are equivalent as approved by the Executive Director. Specifically, the effluent intermittently backs up causing inaccurate flow measurements.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1

17 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$500

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$125

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes The Respondent came into compliance on May 13, 2011.

Violation Subtotal \$375

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$645

This violation Final Assessed Penalty (adjusted for limits) \$645

Economic Benefit Worksheet

Respondent City of Malone
Case ID No. 42068
Reg. Ent. Reference No. RN102075660
Media Water Quality
Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	26-Apr-2011	13-May-2011	0.05	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to make adjustments to the inline pump to control flow levels. Date required is the investigation date. Final date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$0

EFFLUENT VIOLATION TABLE								
City of Malone								
TPDES Permit No. WQ0010514001								
Docket No. 2011-1189-MWD-E								
Months	Dissolved Oxygen Monthly Min.	Chlorine Monthly Min.	BOD ₅ Daily Avg. Loading	BOD ₅ Daily Avg. Conc.	BOD ₅ Single Grab Conc.	TSS Daily Avg. Loading	TSS Daily Avg. Conc.	TSS Single Grab Conc.
	Limit = 2 mg/L	Limit = 1 mg/L	Limit = 8.3 lbs/day	Limit = 20 mg/L	Limit = 65 mg/L	Limit = 8.3 lbs/day	Limit = 20 mg/L	Limit = 40 mg/L
December 2010	c	c	c	23.8	c	c	45.0	79
January 2011	1.9	c	c	c	c	9.6	81.0	192
February 2011	c	c	15.0	40.5	c	21.1	62.0	84
March 2011	c	c	c	58.2	71	c	56.2	c
*April 26, 2011	c	0.1	c	c	c	c	c	c

BOD₅ = 5-day biochemical oxygen demand

TSS = total suspended solids

Conc. = Concentration

* grab sample collected by investigator

Avg. = Average

lbs/day = pounds per day

mg/L = milligrams per liter

c = compliant

Min. = Minimum

Compliance History

Customer/Respondent/Owner-Operator: CN600335442 City of Malone Classification: AVERAGE Rating: 1.67

Regulated Entity: RN102075660 CITY OF MALONE Classification: AVERAGE Site Rating: 0.33

ID Number(s): WASTEWATER PERMIT WQ0010514001
WASTEWATER EPA ID TX0020303
WASTEWATER LICENSING LICENSE WQ0010514001

Location: approximately 1150 feet east of the intersection of Farm-to-Market Road 308 and State Highway 171, on the southside of State Highway 171, Hill County, Texas

TCEQ Region: REGION 09 - WACO

Date Compliance History Prepared: July 11, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: July 11, 2006 to July 11, 2011

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: JR Cao Phone: (512) 239-2543

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2010 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 07/13/2006 (520576)	10 12/11/2006 (576106)
2 08/08/2006 (520577)	11 02/09/2007 (576107)
3 09/15/2006 (520578)	12 10/09/2007 (595078)
4 01/18/2007 (536034)	13 10/04/2007 (607715)
5 03/22/2007 (576101)	14 04/17/2007 (607716)
6 05/10/2007 (576102)	15 07/19/2007 (607717)
7 06/18/2007 (576103)	16 08/29/2007 (607718)
8 10/13/2006 (576104)	17 09/19/2007 (607719)
9 11/08/2006 (576105)	

18	10/15/2007	(619804)	42	06/30/2009	(805352)
19	11/26/2007	(619805)	43	07/30/2009	(805353)
20	12/17/2007	(619806)	44	08/20/2009	(805354)
21	02/20/2008	(672296)	45	09/29/2009	(805355)
22	01/23/2008	(672297)	46	10/26/2009	(805356)
23	07/22/2008	(685560)	47	12/14/2009	(805357)
24	03/24/2008	(690213)	48	12/29/2009	(805358)
25	04/22/2008	(690214)	49	02/01/2010	(805359)
26	05/27/2008	(690215)	50	03/25/2010	(831130)
27	06/18/2008	(711025)	51	04/26/2010	(831131)
28	07/28/2008	(711026)	52	06/02/2010	(845069)
29	08/20/2008	(711027)	53	06/24/2010	(846346)
30	09/24/2008	(711028)	54	09/23/2010	(866916)
31	10/23/2008	(727684)	55	08/26/2010	(866917)
32	11/19/2008	(727685)	56	10/04/2010	(881583)
33	12/23/2008	(727686)	57	10/29/2010	(881584)
34	04/24/2009	(743116)	58	12/10/2010	(896328)
35	02/20/2009	(750527)	59	01/27/2011	(902384)
36	01/27/2009	(750528)	60	03/03/2011	(916424)
37	07/16/2009	(759925)	61	03/16/2011	(916425)
38	03/23/2009	(768541)	62	04/04/2011	(924965)
39	04/22/2009	(768542)	63	04/27/2011	(924966)
40	05/27/2009	(768543)	64	06/24/2011	(932990)
41	03/02/2010	(805351)	65	07/01/2011	(935065)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 11/30/2006 (576106) CN600335442
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter

Date: 01/31/2007 (607715) CN600335442
 Self Report? YES Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to meet the limit for one or more permit parameter

Date: 06/30/2007 (607717) CN600335442
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 08/23/2007 (571034) CN600335442
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 30, SubChapter J 30.350(c)
30 TAC Chapter 30, SubChapter J 30.350(d)
Operational Requirements PERMIT
Description: Failure by the permittee to employ a licensed individual to operate the
wastewater treatment plant.

Date: 03/31/2008 (690214) CN600335442
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 10/31/2008 (727685) CN600335442
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 04/23/2009 (743116) CN600335442
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(5)
Operational Requirements; No. 4, Pg. 10 PERMIT
Description: Failure to install and subsequently maintain adequate safeguards to prevent the
discharge of untreated or inadequately treated wastes during electrical power
failures by means of alternate power sources, standby generators, and/or
retention of inadequately treated wastewater.

Date: 07/31/2009 (805354) CN600335442
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 12/31/2010 (902384) CN600335442
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 01/31/2011 (916424) CN600335442
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 02/28/2011 (924965) CN600335442
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)

30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to meet the limit for one or more permit parameter

Date: 03/31/2011 (924966)

CN600335442

Self Report? YES

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to meet the limit for one or more permit parameter

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF MALONE
RN102075660**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2011-1189-MWD-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Malone ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a wastewater treatment facility located approximately 1,150 feet east of the intersection of Farm-to-Market Road 308 and State Highway 171, on the south side of State Highway 171 in Hill County, Texas (the "Facility").
2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notices of the violations alleged in Section II ("Allegations") on or about July 2, 2011 and July 5, 2011.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Twenty-Three Thousand One Hundred Forty-Four Dollars (\$23,144) is assessed by the Commission in settlement of the

violations alleged in Section II ("Allegations"). The Financial Assurance Section of the Commission's Financial Administration Division reviewed financial documentation submitted by the Respondent and determined that the Respondent is unable to pay the administrative penalty. Therefore, Twenty-Three Thousand One Hundred Forty-Four Dollars (\$23,144) of the penalty is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that by May 13, 2011, the Respondent has implemented the following corrective measures at the Facility:
 - a. Corrected and updated the operator logs to notate the measurement times;
 - b. Removed, cleaned, and disposed of the sludge and solids in the chlorine contact chamber;
 - c. Installed atmospheric vacuum breakers on potable water connections; and
 - d. Adjusted the electrodes on the inline pump to control flow measurements.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1) and (4) and Texas Pollutant Discharge Elimination System Permit

("TPDES") No. WQ0010514001, Permit Conditions No. 2.d. Specifically, sludge was documented in the receiving stream. Samples collected at the mixing point of the effluent and the receiving stream and approximately 200 yards downstream indicated elevated levels of pollutants (including total suspended solids, volatile suspended solids, ammonia nitrogen, total phosphorus, and total kjeldahl nitrogen), as well as decreased levels of dissolved oxygen, as documented during an investigation conducted on April 26, 2011.

2. Failed to comply with permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0010514001, Effluent Limitations and Monitoring Requirements Nos. 1 and 6, as documented during a record review conducted on June 23, 2011, and as shown in the violation table below:

EFFLUENT VIOLATION TABLE								
Months	Dissolved Oxygen Monthly Min.	Chlorine Monthly Min.	BOD ₅ Daily Avg. Loading	BOD ₅ Daily Avg. Conc.	BOD ₅ Single Grab Conc.	TSS Daily Avg. Loading	TSS Daily Avg. Conc.	TSS Single Grab Conc.
	Limit = 2 mg/L	Limit = 1 mg/L	Limit = 8.3 lbs/day	Limit = 20 mg/L	Limit = 65 mg/L	Limit = 8.3 lbs/day	Limit = 20 mg/L	Limit = 40 mg/L
December 2010	c	c	c	23.8	c	c	45.0	79
January 2011	1.9	c	c	c	c	9.6	81.0	192
February 2011	c	c	15.0	40.5	c	21.1	62.0	84
March 2011	c	c	c	58.2	71	c	56.2	c
*April 26, 2011	c	0.1	c	c	c	c	c	c

BOD₅ = 5-day biochemical oxygen demand

TSS = total suspended solids

Conc. = Concentration

* grab sample collected by investigator

lbs/day = pounds per day

mg/L = milligrams per liter

c = compliant

Min. = Minimum

3. Failed to comply with permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0010514001, Effluent Limitations and Monitoring Requirements No. 2. Specifically, a chlorine grab sample taken by the investigator was not within the permitted range, as documented during an investigation conducted on April 26, 2011, and shown in the violation table above.
4. Failed to maintain complete records of monitoring activities, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and (11)(C)(i) and 319.7(a) and TPDES Permit No.

WQ0010514001, Monitoring and Reporting Requirements No. 3.c. Specifically, measurement times were not recorded on the operator logs, as documented during an investigation conducted on April 26, 2011.

5. Failed to ensure that all systems of collection, treatment, and disposal are properly operated and maintained, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES Permit No. WQ0010514001, Operational Requirements No. 1. Specifically, there were floating solids and settled sludge located in the chlorine contact chamber, as documented during an investigation conducted on April 26, 2011.
6. Failed to provide a backflow prevention device at the Facility, in violation of 30 TEX. ADMIN. CODE § 317.7(i). Specifically, atmospheric vacuum breakers were not installed on the potable water faucets, as documented during an investigation conducted on April 26, 2011.
7. Failed to accurately measure the flow as prescribed in the Water Measurement Manual, United States Department of the Interior Bureau of Reclamation, Washington, D.C. or methods that are equivalent as approved by the Executive Director, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and 319.11(d), and TPDES Permit No. WQ0010514001, Monitoring and Reporting Requirements No. 2.a. Specifically, the effluent intermittently backs up causing inaccurate flow measurements, as documented during an investigation conducted on April 26, 2011.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Malone, Docket No. 2011-1189-MWD-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, remove and properly dispose of the sludge in the receiving stream;

- b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.a, in accordance with Ordering Provision No. 2.d below;
- c. Within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0010514001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with the permitted effluent limitations, in accordance with Ordering Provision No. 2.d below; and
- d. The certification required by Ordering Provision Nos. 2.b and 2.c shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

- 3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Pam Dawkins Jr.
For the Executive Director

9/4/12
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

David R. Bow
Signature

5-11-2012
Date

David R. Bow
Name (Printed or typed)
Authorized Representative of
City of Malone

Mayor
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.